

BRENNAN LAW FIRM PLLC
116 WEST 23RD STREET, 5TH F
NEW YORK, NY 10011

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MEMO ENDORSED

Kerry A. Brennan
kerry.brennan@brennanlawpllc.com
212.729.1980

VIA ECF

February 28, 2024

The Honorable J. Paul Oetken
United States District Court
Southern District of New York
40 Foley Square, Room 210
New York, New York 10007

***Re: Keep On Kicking Music, Inc. et al. v. Universal Music Group, Inc. et al.,
Case No. 23-cv-004400-JPO-BCM***

***Letter Motion for a Stay of Discovery Pending a Decision on the Outcome Defendants
Kreyol Music, Inc. and Melodie Makers, Inc.'s Motion to Dismiss For Lack of
Personal Jurisdiction, or, Alternatively, on the Ground of Forum Non Conveniens***

Dear Judge Oetken:

This firm represents Defendants Melodie Makers, Inc. and Kreyol Music, Inc.

Yesterday, Defendants Kreyol Music and Melodie Makers filed a motion to dismiss the claims against it for lack of personal jurisdiction, or, alternatively, on the ground of *forum non conveniens*. Dkt. Nos. 58 & 59. Plaintiffs Keep On Kicking Music, Inc., Keep On Moving Music, Inc., and Free World Music, Limited -- all based in Miami, Florida per the Amended Complaint -- commenced this action against Defendants Kreyol Music and Melodie Makers for declaratory judgment as to the rightful ownership of the composition, publishing and sound recording rights in the musical work *Espoir/Composition X* ("ECX"). The Universal Defendants also have alleged a cross claim relating to the same subject.


Defendants Kreyol Music and Melodie Makers are companies organized under Florida law whose principal places of business also are in Florida. Kreyol Music and Melodie Makers contend that they are the sole and rightful owners of the publishing and sound recording rights in the master recording of *Viva les Difficiles*, an album which included the work *ECX*, which was produced, published and first released in Haiti. Kreyol Music and Melodie Makers acquired the publishing and sound recording rights to such work in 1995 from Cine Disc, a Haitian record label. Kreyol Music and Melodie Makers sought to ratify the ownership of their rights under

Haitian law in 2018. All of the witnesses and documents relating to the claims for ownership of the composition, publishing and sound recording rights in *ECX* are located in Florida or Haiti. New York has no connection to such matter. Accordingly, for the reasons set forth in the motion papers, this Court lacks personal jurisdiction over Defendants Kreyol Music and Melodie Makers, and New York is an inconvenient forum for the resolution of all claims against Kreyol Music and Melodie Makers relating to the ownership of the publishing and sound recording rights in *Viva les Difficiles* including the work *ECX*.

Discovery has not yet commenced in this action, and the parties are scheduled to appear before Magistrate Moses on March 7, 2024. Plaintiffs are currently seeking to commence discovery immediately. Defendants seek a stay of the commencement of discovery.

Under F.R.C.P. 26(c), a district court may stay discovery during the pendency of a motion to dismiss for “good cause shown.” See *Spencer Trask Software and Information Services, LLC v. RPost International Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) (“Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, a court has discretion to stay discovery ‘for good cause shown.’”). The pending motion is supported by substantial arguments for dismissal of the action against Defendants Kreyol Music and Melodie Makers. *Spencer Trask*, 206 F.R.D. at 368 (“[A] court should ... consider the strength of the dispositive motion that is the basis of the discovery stay application.”). This Court has granted a stay in similar circumstances. See *Hertz Global Holdings, Inc. v. Nat. Union Fire Ins. Co. of Pittsburg*, No. 19-cv-6957, 2020 WL 6642188 (S.D.N.Y. Nov. 20, 2020). Plaintiffs will not face any significant prejudice. A short delay of time pending the outcome of this motion would not be unfairly prejudicial.

Respectfully submitted,


Kerry A. Brennan

Defendants' request to stay discovery pending resolution of the motion to dismiss is before Judge Moses. (See Dkt. 8.) The matter will be addressed at the upcoming conference scheduled for March 7, 2024. (See Dkt. 44.) Any opposition to defendants' motion shall be filed no later than **March 4, 2024**. See Moses Ind. Prac. § 2(e). Defendants' reply, if any, shall be filed no later than **March 6, 2024**. See *id.* **SO ORDERED.**



Barbara Moses
United States Magistrate Judge
February 28, 2024